

ESTATE OF BILLMAN MILTON JOHNS	:	Order Vacating Order on Reopening
Unallotted Pima	:	and Remanding Case
Gila River Id. No. 3678	:	
Probate No. IP PH 71 86	:	Docket No. IBIA 86-32
	:	
	:	October 7, 1986

On April 7, 1986, the Board of Indian Appeals (Board) received a notice of appeal from Madeline Faye Johns, Malcolm Lee Johns, and Geneva Faye Johns (appellants). Appellants, who are children and heirs of Billman Milton Johns (decedent), challenge the February 7, 1986, order on reopening issued by Administrative Law Judge S. N. Willett in which she amended the May 7, 1971, order determining heirs in decedent's estate to include Sharon Faye Johns (Verlarde) (appellee) as a daughter of decedent entitled to receive one fourth (1/4) of decedent's estate. <sup>1/</sup>

In support of her petition for reopening, appellee submitted to the Judge a birth certificate and a certificate of blessing, each showing decedent as her father. She stated that she was nine years old at the time of the original probate proceedings, was not living in the vicinity, and had no actual notice of the proceedings.

On November 25, 1985, and January 24, 1986, Judge Willett served notice on all interested parties, enclosing copies of the documents submitted by appellee and requesting comments and objections. She received no comments or objections and therefore found there was no need for an evidentiary hearing. On February 7, 1986, she issued an order on reopening, including appellee as a daughter and heir of decedent.

On appeal to the Board, appellants submitted a sworn statement by Richenda Vavages, the mother of appellants and appellee, stating that appellee is not the child of decedent. Appellants should have presented this statement to the Judge in response to her November 1985 and January 1986 notices to all parties concerning appellee's petition for reopening. The Board notes, however, that Vavages testified at the February 18, 1971, hearing to probate decedent's

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<sup>1/</sup> All inherited interests in decedent's estate are subject to a 1/3 life estate held by Gloria Manuel Johns, decedent's surviving spouse. The life estate is not at issue in this reopening.

estate. At pages 1-2 of the transcript of that hearing, Vavages stated that she and decedent had only three children, present appellants. It is possible that appellants believed no further objection would be necessary in view of this testimony.

However, appellee's birth certificate, which shows that it was registered two days after her birth, lists decedent as her father and gives Richanda (sic) Vavages as her mother's maiden name. The certificate is signed as correct to the best of her knowledge by Richenda Johns.

Consequently, a conflict exists in Vavages' official statements concerning appellee's father. If this conflict were permitted to remain unresolved, a manifest injustice would occur.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 7, 1986, order in this case is vacated and the matter is remanded to Judge Willett for further proceedings.

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Anita Vogt  
Acting Chief Administrative Judge

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Kathryn A. Lynn  
Administrative Judge